

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

*
ELAINE CHAO, SECRETARY OF LABOR, *
United States Department of Labor, *
*
Plaintiff, *
* CIVIL ACTION
v. *
* FILE NO.
AMBIENCE 401(k) PLAN & TRUST, *
*
Defendant. *

MOTION FOR SERVICE BY PUBLICATION

The Plaintiff, the Secretary of Labor, United States Department of Labor, moves the Court for an Order permitting substituted service by publication under the laws of the Commonwealth of Massachusetts.

As reason therefore the Movant states that, as averred in the Complaint, the original Plan Fiduciary of the Ambiance 401(k) Plan and Trust, the late Karen Vail, died in 2002 without appointing a successor trustee, and the business is completely defunct at the present time and has been so since 2002. Further, the efforts of the U.S. Department of Labor to identify and locate any persons or entities who have succeeded to the role of Plan Fiduciary have been utterly unavailing. The Defendant Plan is therefore considered to have been abandoned, necessitating recourse to this Court by means of the instant Complaint.

Since there is no person or entity acting or even purporting to act on behalf of this abandoned plan, and since all efforts to identify any such person or entity have been unavailing, there is as a practical matter, no one on whom to serve the petition.

The Plaintiff seeks the Court's authority to effect service of process in this matter by publication, as provided for under the laws of the Commonwealth of Massachusetts where the Plan is located and where its assets are held. The resort to substituted service by publication is reasonable here in light of the inability of the Plaintiff to discover or identify any person or entity who has assumed a fiduciary role towards the Plan. Moreover Rule 4(e) of the Federal Rules of Civil Procedure contemplates an efficacious resort to service under state law as an alternative means of effecting proper service.

For the foregoing reasons the Plaintiff urges the Court to grant the Motion.

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DATE: July 19, 2005